

the notice. If requested, the Regional Administrator may hold a public hearing and/or extend the public comment period for up to an additional 30 days.

(6) After the close of the public comment period, the Regional Administrator will review all comments received and prepare a final permit to operate and final technical support document, unless the Regional Administrator determines that additional requirements are not necessary to ensure compliance with the implementation plan or to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment. The final technical support document will include a response to all comments received during the public comment period.

(7) The final permit to operate and final technical support document will be sent to the owner or operator of the air pollution source and will be made available at all of the locations where the draft permit was made available. In addition, the final permit to operate and final technical support document will be sent to all persons who provided comments on the draft permit to operate.

(8) The final permit to operate will be a final agency action for purposes of administrative appeal and judicial review.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in §49.123 General provisions: Act, actual emissions, air pollutant, air pollution source, allowable emissions, ambient air, emission, emission factor, Federally enforceable, implementation plan, owner or operator, potential to emit, and Regional Administrator.

§§ 49.140–49.150 [Reserved]

**FEDERAL MINOR NEW SOURCE REVIEW
PROGRAM IN INDIAN COUNTRY**

SOURCE: 76 FR 38788, July 1, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 38788, July 1, 2011, an undesignated center heading and §§49.151 through 49.161 to subpart C were added, effective Aug. 30, 2011.

§ 49.151 Program overview.

(a) *What constitutes the Federal minor new source review (NSR) program in Indian country?* As set forth in this Federal Implementation Plan (FIP), the Federal minor NSR program in Indian country (or “program”) consists of §§49.151 through 49.165.

(b) *What is the purpose of this program?* This program has the following purposes:

(1) It establishes a preconstruction permitting program for new and modified minor sources (minor sources) and minor modifications at major sources located in Indian country to meet the requirements of section 110(a)(2)(C) of the Act.

(2) It establishes a registration system that will allow the reviewing authority to develop and maintain a record of minor source emissions in Indian country.

(3) It provides a mechanism for an otherwise major source to voluntarily accept restrictions on its potential to emit to become a synthetic minor source. This mechanism may also be used by an otherwise major source of HAPs to voluntarily accept restrictions on its potential to emit to become a synthetic minor HAP source. Such restrictions must be enforceable as a practical matter.

(4) It provides an additional mechanism for case-by-case maximum achievable control technology (MACT) determinations for those major sources of HAPs subject to such determinations under section 112(g)(2) of the Act.

(5) It sets forth the criteria and procedures that the reviewing authority (as defined in §49.152(d)) will use to administer the program.

(c) *When and where does this program apply?*

(1) The provisions of this program apply in Indian country where there is no EPA-approved minor NSR program, according to the following implementation schedule:

(i) *Existing major sources.* (A) If you wish to commence construction of a minor modification at an existing major source on or after August 30, 2011, you must obtain a permit pursuant to §§49.154 and 49.155 (or a general

permit pursuant to § 49.156, if applicable) prior to commencing construction.

(B) If you wish to obtain a synthetic minor source permit pursuant § 49.158 to establish a synthetic minor source and/or a synthetic minor HAP source at your existing major source, you may submit a synthetic minor source permit application on or after August 30, 2011. However, if your permit application for a synthetic minor source and/or synthetic minor HAP source pursuant to the FIPs for reservations in Idaho, Oregon and Washington has been determined complete prior to August 30, 2011, you do not need to apply for a synthetic minor source permit under this program.

(ii) *Synthetic minor sources.* (A) If you wish to commence construction of a new synthetic minor source and/or a new synthetic minor HAP source or a modification at an existing synthetic minor source and/or synthetic minor HAP source on or after August 30, 2011, you must obtain a permit pursuant to § 49.158 prior to commencing construction.

(B) If your existing synthetic minor source and/or synthetic minor HAP source was established pursuant to the FIPs applicable to the Indian reservations in Idaho, Oregon and Washington or was established under an EPA-approved rule or permit program limiting potential to emit, you do not need to take any action under this program unless you propose a modification for this existing synthetic minor source and/or synthetic minor HAP source, on or after the effective date of this rule, that is, on or after August 30, 2011. For these modifications, you need to obtain a permit pursuant to § 49.158 prior to commencing construction.

(C) If your existing synthetic minor source and/or synthetic minor HAP source was established under a permit with enforceable emissions limitations issued pursuant to part 71 of this chapter, the reviewing authority has the discretion to require you to submit a permit application for a synthetic minor source permit under this program by September 4, 2012 and pursuant to § 49.158, to require you to submit a permit application for a synthetic minor source permit under this pro-

gram (pursuant to § 49.158) at the same time that you apply to renew your part 71 permit or to allow you to continue to maintain synthetic minor status through your part 71 permit. If the reviewing authority requires you to obtain a synthetic minor source permit and/or synthetic minor HAP source permit under this program (pursuant to § 49.158) it also has the discretion to require any additional requirements, including control technology requirements, based on the specific circumstances of the source.

(D) If your existing synthetic minor source and/or synthetic minor HAP source was established through a mechanism other than those described in paragraphs (c)(1)(ii)(B) and (C) of this section, you must submit an application pursuant to § 49.158 for a synthetic minor source permit under this program by September 4, 2012. The reviewing authority has the discretion to require any additional requirements, including control technology requirements, based on the specific circumstances of the source.

(iii) *True minor sources.* (A) If you own or operate an existing true minor source in Indian country (as defined in 40 CFR 49.152(d)), you must register your source with your reviewing authority in your area within 18 months after the effective date of this program, that is, by March 1, 2013. If your true minor source commences construction in the time period after the effective date of this rule and September 2, 2014, you must also register your source with the reviewing authority in your area within 90 days after the source begins operation. You are exempt from this registration requirement if your source is subject to § 49.138—“Rule for the registration of air pollution sources and the reporting of emissions.”

(B) If you wish to commence construction of a new true minor source or a modification at an existing true minor source that is subject to this program, you must obtain a permit pursuant to §§ 49.154 and 49.155 (or a general permit pursuant to § 49.156, if applicable) by the earlier of 6 months after the general permit for a source category is published in the FEDERAL REGISTER or on or after 36 months from

the effective date of this rule, that is, September 2, 2014. The proposed new source or modification will also be subject to the registration requirements of § 49.160, except for sources that are subject to § 49.138.

(2) The provisions of this program or portions of this program cease to apply in an area covered by an EPA-approved Tribal implementation plan on the date that our approval of that implementation plan becomes effective, provided that the implementation plan includes provisions that comply with the requirements of section 110(a)(2)(C) of the Act for the construction and modification of minor sources and minor modifications at major sources. Permits previously issued under this program will remain in effect and be enforceable as a practical matter until and unless the Tribe issues new permits to these sources based on the provisions of the EPA-approved Tribal implementation plan.

(d) *What general provisions apply under this program?* The following general provisions apply to you as an owner/operator of a minor source:

(1) If you commence construction of a new source or modification that is subject to this program after the applicable date specified in paragraph (c) of this section without applying for and receiving a permit pursuant to this program, you will be subject to appropriate enforcement action.

(2) If you do not construct or operate your source or modification in accordance with the terms of your minor NSR permit, you will be subject to appropriate enforcement action.

(3) If you are subject to the registration requirements of this program, you must comply with those requirements.

(4) Issuance of a permit does not relieve you of the responsibility to comply fully with applicable provisions of any EPA-approved implementation plan or FIP and any other requirements under applicable law.

(5) Nothing in this program prevents a Tribe from administering a minor NSR permit program with different requirements in an approved Tribal Implementation Plan (TIP) as long as the TIP does not interfere with any applicable requirement of the Act.

(e) *What is the process for issuing permits under this program?* For the reviewing authority to issue a final permit decision under this program (other than a general permit under § 49.156 or a synthetic minor source permit under § 49.158), all the actions listed in paragraphs (e)(1) through (8) of this section need to be completed. The processes for issuing general permits and synthetic minor source permits are set out in § 49.156 and § 49.158, respectively.

(1) You must submit a permit application that meets the requirements of § 49.154(a).

(2) The reviewing authority determines completeness of the permit application as provided in § 49.154(b) within 45 days of receiving the application (60 days for minor modifications at major sources).

(3) The reviewing authority determines the appropriate emission limitations and permit conditions for your affected emissions units under § 49.154(c).

(4) The reviewing authority may require you to submit an Air Quality Impact Analysis (AQIA) if it has reason to be concerned that the construction of your minor source or modification would cause or contribute to a NAAQS or PSD increment violation.

(5) If an AQIA is submitted, the reviewing authority determines that the new or modified source will not cause or contribute to a NAAQS or PSD increment violation.

(6) The reviewing authority develops a draft permit that meets the permit content requirements of § 49.155(a).

(7) The reviewing authority provides for public participation, including a 30-day period for public comment, according to the requirements of § 49.157.

(8) The reviewing authority either issues a final permit that meets the requirements of § 49.155(a) or denies the permit and provides reasons for the denial, within 135 days (or within 1 year for minor modifications at major sources) after the date the application is deemed complete and all additional information necessary to make an informed decision has been provided.

§ 49.152 Definitions.

(a) For sources of regulated NSR pollutants in nonattainment areas, the